

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLANCHE ROAD CORPORATION, : CIVIL ACTION
a Pennsylvania Corporation, General :
Partner and Trading as BLANCHE ROAD :
ASSOCIATES, I, a Pennsylvania Limited :
Partnership :
 :
 :
v. :
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 :
BENSALEM TOWNSHIP, et al. : NO. 89-9040

MEMORANDUM AND ORDER

Fullam, Sr. J.

June , 1998

On April 15, 1996, plaintiff obtained a judgment against the defendant Bensalem Township in the sum of \$245,489.00 in this civil rights action. Plaintiff also obtained a very substantial award of counsel fees, but disputes arose between plaintiff and its counsel, the law firm of Pepper Hamilton LLP, as to the law firm's right to be paid. Both the merits judgment and the later counsel fee award judgment were appealed to the Third Circuit Court of Appeals. In the course of the proceedings, I ruled that the law firm of Pepper Hamilton LLP was entitled to a charging lien for its services in producing the merits judgment. On February 14, 1997, implementing this decision, I entered an order which precluded the defendant Bensalem Township from making any payments to plaintiff on account of the merits judgment or the counsel fee award, without the written consent of the law firm.

Both the merits judgment and the counsel fee award were affirmed by the Third Circuit Court of Appeals. The law firm's counsel fees have now been paid (with the possible exception of the firm's share of taxable costs).

Plaintiff has now filed a motion to vacate the Order of February 14, 1997, so that it can collect the merits judgment from the defendant township. The township, in opposition, seeks a ruling from this Court to the effect that, as a consequence of other litigation, the township is entitled to a substantial credit against the merits judgment, and actually now owes only a balance of about \$6,000.

The plaintiff in the present case is, as the caption indicates, "Blanche Road Corporation, a Pennsylvania Corporation, General Partner and Trading as Blanche Road Associates, I, a Pennsylvania Limited Partnership." The Blanche Road Associates I partnership was named as defendant in a mortgage foreclosure action in state court, in which Germantown Savings Bank obtained a substantial deficiency judgment against the partnership. In the course of executing on that judgment, the bank brought a garnishment proceeding against Bensalem Township; the township acknowledged that it was indebted to plaintiff on the merits judgment in this action. As a result, the bank exercised its right of setoff against funds of the township on deposit with the bank, and the township has therefore paid all but about \$6,000 of

the amount of the merits judgment.

Plaintiff argues, however, that since the deficiency judgment was obtained against "Blanche Road Associates I" and not against "Blanche Road Corporation" the township is not entitled to the credit it seeks. I reject that argument.

It is undisputed that "Blanche Road Corporation" is the general partner of the limited partnership "Blanche Road Associates I"; indeed, both the corporation and the partnership are owned and controlled by the same individual, a gentleman named Walter Czekay. Under Pennsylvania law, a partnership is required to prosecute lawsuits "in the names of the then partners trading in the firm name." See Pa. R. Civ. P. 2127(a); whereas actions against a partnership can also be prosecuted "against the partnership in its firm name." See Pa. R. Civ. P. 2128(a). I am satisfied that, in paying the Germantown Savings Bank deficiency judgment, the township satisfied a debt owed by the plaintiffs in this action.

At the time the pending motion was argued, the Clerk had preliminarily taxed costs against the township in the amount of \$37,334.74, but a hearing on objections to that action had not yet been held. Although the counsel fees of the Pepper firm have been paid, there is a claim that some portion of the taxable costs were advanced by the law firm. When the issue of costs has finally been resolved, I assume the proper allocation as between

the law firm and the plaintiff will also be resolved amicably; but, as a precautionary measure, it is appropriate to extend the February 14, 1997 Order to the judgment for costs. Accordingly, Plaintiff's Motion to Vacate the February 14, 1997 Order will be granted only in part.

An Order follows.

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ORDER

AND NOW, this day of June, 1998, upon consideration of Plaintiff's Motion to Vacate this Court's Order of February 14, 1997, IT IS ORDERED, that plaintiff's motion is granted in part, as follows:

1. Plaintiff may execute upon its merits judgment to the extent of \$6,000. This Court now finds as a fact that all of the merits judgment except \$6,000 has already been paid as a result of garnishment proceedings in the matter of Germantown Savings Bank v. Blanche Road Associates I, Bucks County Common Pleas Court, No. 93-9255.

2. With respect to any judgment which has been or may be entered for costs in this case, the restrictions of the February 14, 1997 Order shall remain in effect (i.e., no distribution to plaintiff without the consent of the law firm of Pepper Hamilton LLP), unless otherwise ordered by this Court.

John P. Fullam, Sr. J.